

VZCZCXRO9111
PP RUEHCHI RUEHDT RUEHHM
DE RUEHJA #2464/01 2490952
ZNY CCCCC ZZH
P 060952Z SEP 07 ZDK
FM AMEMBASSY JAKARTA
TO RUEHC/SECSTATE WASHDC PRIORITY 6105
INFO RUEHZS/ASSOCIATION OF SOUTHEAST ASIAN NATIONS PRIORITY
RUEHBY/AMEMBASSY CANBERRA PRIORITY 1125
RUEHKO/AMEMBASSY TOKYO PRIORITY 0753
RUEHWL/AMEMBASSY WELLINGTON PRIORITY 1721
RUEAWJA/DEPT OF JUSTICE WASHDC PRIORITY
RUEATRS/DEPT OF TREASURY WASHDC PRIORITY

C O N F I D E N T I A L SECTION 01 OF 02 JAKARTA 002464

SIPDIS

AIDAC
SIPDIS

DEPT FOR EAP, EAP/MTS, INR/EAP, INL FOR BOULDIN
DEPT FOR EEB/IFD/OMA
DOJ/OPDAT FOR LEHMANN/ALEXANDRE/BERMAN
SINGAPORE FOR BAKER
TREASURY FOR IA-BAUKOL
DEPT PASS FEDERAL RESERVE SAN FRANCISCO FOR FINEMAN
DEPT PASS EXIM BANK

E.O. 12958: DECL: 09/05/2017
TAGS: [PGOV](#) [KJUS](#) [KCOR](#) [KMCA](#) [EAID](#) [ID](#)
SUBJECT: MEASURED PROGRESS IN EFFORT TO REJUVENATE
ANTI-CORRUPTION COURT

REF: A. JAKARTA 1391
[1](#)B. 06 JAKARTA 13603

JAKARTA 00002464 001.2 OF 002

Classified By: POL/C Joseph Legend Novak, for reasons 1.4(b) and (d).

Summary

[1](#)1. (C) Responding to a Constitutional Court ruling, a Ministry of Law drafting team has endorsed a proposal which would preserve key elements of the Anti-Corruption Court. The new draft competes with an earlier proposal which would basically pull down the pillars, eliminating aspects of the court that make it effective. There will likely be substantial opposition to the new proposal, but the fact that it is on the table is positive. USAID has assisted in the drafting process. End Summary.

Need for a New Model

[1](#)2. (SBU) The Anti-Corruption Court (ACC) was established simultaneously with the Anti-Corruption Commission (KPK) in 2002 in order to handle corruption cases involving high ranking officials and significant losses to the state. Since 2004, the ACC has earned popular support by handing down convictions in every case tried before it, including acting governors and former cabinet officials. The ACC's success aroused opposition from those who feared prosecution as well as criticism on substantive issues. In 2006, the Constitutional Court (CC) declared the ACC unconstitutional on grounds that it created a dual system (the ACC and the general courts) for adjudicating corruption cases, thereby introducing a double standard which created legal uncertainty for the accused (ref B). The CC decision allowed the ACC to continue in operation for three years in order to allow time for the drafting of new legislation to resolve the legal issues identified by the CC.

A New Draft

13. (SBU) The Law Ministry team now drafting the new legislation has adopted a proposal by a group of USAID-supported legal experts which would expand the ACC from a single court based in Jakarta into at least five designated courts within the country's general court system. These courts would have exclusive jurisdiction to try corruption cases, thereby eliminating the duality that the Constitutional Court had found to be unconstitutional. The experts' draft would also preserve the use of non-career judges in corruption cases and would mandate that all anti-corruption judges (career and non-career) undergo specialized training and certification by an independent commission before appointment to the special courts. The experts' proposal also outlines a new court procedure, similar to a preliminary hearing in the United States, in which a judge would determine whether there was sufficient evidence to proceed with a trial.

14. (SBU) The team that drafted the proposal was supported by the Indonesia Anti-Corruption and Commercial Court Enhancement project (IN-ACCE), a USAID contractor. IN-ACCE assembled the drafting team at the request of the Supreme Court and the State Ministry for National Development and Planning (BAPPENAS).

Conflicts with Earlier Draft

15. (SBU) The new draft competes with an earlier draft law prepared by a Ministry of Law-appointed committee led by legal scholar Andi Hamzah (ref A). Like the IN-ACCE draft, the Hamzah draft would place all corruption cases in separate dockets staffed by specially trained judges within certain district courts. However, the Hamzah draft would eliminate non-career judges and place the new anti-corruption panels

JAKARTA 00002464 002.2 OF 002

squarely inside the general court system. Hamzah's draft would also give the AGO exclusive authority to prosecute corruption cases, thereby reducing the authority of the largely successful Anti-Corruption Commission (KPK). Hamzah's proposal drew heavy criticism from NGOs, who argued that non-career judges were a key factor in the success of the current ACC and would be needed to ensure the integrity of the new anti-corruption courts.

An Uncertain Future

16. (C) The Minister of Law and Human Rights has yet to take a position on the new draft legislation. The head of the Ministry's drafting committee told us he was confident that a bill with its features would be passed into law sometime in 2008, but other interests can be expected to offer stiff opposition before the legislation reaches the DPR. The Supreme Court (SC), in particular, opposes the use of non-career judges, who are not subject to the same level of SC control as career judges are. A contact at the KPK supports the new draft, but told us Hamzah's proposal might nevertheless prove to be the more "realistic" of the two. He also said the DPR might choose to defer the issue entirely until after the 2009 elections, which would leave a short window of opportunity as the ACC's legal mandate will expire in December 2009 unless new legislation is passed.

HUME